

LABOR SERVICES DIVISION[875]

Notice of Intended Action

**Proposing rule making related to penalties for citations
and providing an opportunity for public comment**

The Labor Commissioner hereby proposes to amend Chapter 1, “Description of Organization and Procedures Before the Division,” Chapter 3, “Posting, Inspections, Citations and Proposed Penalties,” and Chapter 5, “Rules of Practice for Variances, Limitations, Variations, Tolerances and Exemptions,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 88.5 and 91.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2389.

Purpose and Summary

This rule making proposes mandatory, annual cost-of-living adjustments in order to align Iowa’s penalties for occupational safety and health citations with the corresponding federal penalties. The proposed amendments also correct obsolete references; remove obsolete language; make procedural changes to align the rules with amendments to the Administrative Procedures Act enacted in 2020 Iowa Acts, House File 2389; and set forth a new set of procedures for petitions for rule making.

Fiscal Impact

This proposed Notice would cause about a 1 percent increase in OSHA civil penalties that are deposited into the General Fund.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commissioner for a waiver of the discretionary provisions, if any, pursuant to 875—Chapter 1 or Chapter 5 as appropriate.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Commissioner no later than 4:30 p.m. on April 15, 2021. Comments should be directed to:

Kathleen Uehling
Division of Labor Services
150 Des Moines Street
Des Moines, Iowa, 50309
Email: kathleen.uehling@iwd.iowa.gov

Public Hearing

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

April 15, 2021
11 a.m.

Dial: 312.626.6799
Meeting ID: 819 4968 6327
Passcode: 273126

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Commissioner and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 1.17(8) as follows:

1.17(8) To the ~~citizens' aide~~ ombudsman under Iowa Code section ~~2C.9(3)~~ 2C.9(4).

ITEM 2. Amend paragraph **1.18(1)“i”** as follows:

i. List of private employment agencies licensed pursuant to Iowa Code chapter ~~95~~ 94A.

ITEM 3. Amend paragraph **1.42(2)“a”** as follows:

a. Copies of materials are not required to be submitted if the division follows Iowa Code ~~section 89.5(4)~~ sections 89.5(3) and 89A.3(5).

ITEM 4. Amend subrule 1.46(1) as follows:

1.46(1) *Compilation, indexing, public inspection.* The division will maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section ~~17A.2(10)“a,” “c,” “f,” “g,” “h,” “k.”~~ 17A.2(11)“a,” “c,” “f,” “g,” “h,” “k.” Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section ~~17A.2(7)“f.”~~ 17A.2(11)“f.” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

ITEM 5. Amend ~~875—~~**Chapter 1**, Division VII, title, as follows:

DIVISION VII ~~WAIVERS AND VARIANCES FROM ADMINISTRATIVE RULES~~

ITEM 6. Amend subrules 1.101(1) and 1.101(2) as follows:

1.101(1) These rules provide general procedures for waivers ~~and variances~~ from division rules. Specific waiver ~~or variance~~ procedures must be followed when applicable. Except where specific statutory authority is granted, no waiver ~~or variance~~ may be granted from a requirement or duty imposed by statute or when granting a waiver ~~or variance~~ would cause a denial of federal funds or be inconsistent with federal statute or regulation. Any waiver ~~or variance~~ must be consistent with statute. These waiver ~~and variance~~ procedures do not apply to rules that merely define the meaning of a statute or other provision of law unless the division possesses delegated authority to bind the courts with its rules.

1.101(2) Waivers ~~or variances~~ of rules may be granted either in response to a petition for waiver ~~or variance~~ filed within a contested case proceeding, or in response to a petition filed in the absence of a contested case proceeding.

ITEM 7. Amend rule 875—1.102(17A,91) as follows:

875—1.102(17A,91) Petitions. If the petition for waiver ~~or variance~~ relates to a pending contested case, the petition shall be filed in the contested case proceeding. Other petitions must be mailed to Labor Commissioner, Division of Labor Services, 150 Des Moines Street, Des Moines, Iowa 50309. In either case, the petition shall include the following information where applicable:

1.102(1) The name, address, case file number or state identification number, and telephone number of the person requesting the waiver ~~or variance~~ and the person's representative, if any.

1.102(2) No change.

1.102(3) The specific waiver ~~or variance~~ requested, including the precise scope and time period for the waiver or variance.

1.102(4) The relevant facts the petitioner believes justify a waiver ~~or variance~~.

1.102(5) A description of any prior contacts between the division and the petitioner relating to the subject matter of the proposed waiver ~~or variance~~, including but not limited to a list or description of division licenses, registrations, or permits held by the petitioner, and any notices of violation, citations, contested case hearings, or investigative reports relating to the subject matter of the proposed waiver ~~or variance~~ within the last five years.

1.102(6) The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the grant of a waiver ~~or variance~~.

1.102(7) and 1.102(8) No change.

1.102(9) A signed release of information authorizing persons with knowledge regarding the request to furnish the division with information pertaining to the waiver ~~or variance~~.

1.102(10) No change.

ITEM 8. Amend rule 875—1.104(17A,91) as follows:

875—1.104(17A,91) Review. Each petition for a waiver ~~or variance~~ shall be evaluated by the agency based on the unique, individual circumstances set out in the petition. Discretion to grant or deny a waiver ~~or variance~~ petition rests with the labor commissioner or the labor commissioner's designee. The burden of persuasion shall be upon the petitioner. The division may request additional information relating to the requested waiver ~~or variance~~ from the petitioner and may conduct any necessary and appropriate investigation.

1.104(1) A waiver ~~or variance~~ may be granted if the division finds all of the following based on clear and convincing evidence:

a. Application of the rule would pose an undue hardship on the person for whom the waiver ~~or variance~~ is requested;

b. The provisions of a rule subject to a petition for a waiver ~~or variance~~ are not specifically mandated by statute or another provision of law;

c. Waiver ~~or variance~~ of the rule in the specific circumstances would not prejudice the substantial legal rights of any person or cause a denial of federal funds; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested.

1.104(2) Petitioners requesting permanent waivers ~~or variances~~ must also show that a temporary waiver ~~or variance~~ would be impracticable.

ITEM 9. Amend subrules 1.105(1) and 1.105(2) as follows:

1.105(1) The division shall grant or deny all requests as soon as practicable, but no later than 120 days from receipt without consent of the petitioner. However, waiver ~~or variance~~ petitions filed in

contested cases shall be granted or denied no later than the date of the decision in the contested case proceeding. Failure to grant or deny a petition within the required time period shall be deemed a denial.

1.105(2) If a waiver ~~or variance~~ is granted, it shall be drafted to provide the narrowest exception possible to the provisions of the rule. The ruling shall be in writing and shall include the reasons for granting or denying the petition and, if approved, the time period during which the waiver ~~or variance~~ is effective. The division may place any condition on a waiver ~~or variance~~ that the division finds desirable to protect the public health, safety, and welfare.

ITEM 10. Adopt the following new subrule 1.105(4):

1.105(4) Information about all orders granting or denying a waiver petition shall be submitted to the legislative services agency through the designated Internet site within 60 days of the granting or denying of the petition. The information submitted is available to the public via the website.

ITEM 11. Amend rules 875—1.106(17A,91) to 875—1.109(17A,91) as follows:

875—1.106(17A,91) Public availability. Subject to the provisions of Iowa Code section 17A.3(1) “e,” orders granting and denying waivers ~~or variances~~ shall be indexed by rule and available for public inspection.

875—1.107(17A,91) Cancellation. The division may cancel a waiver ~~or variance~~ upon appropriate notice and hearing if the facts alleged in the petition or supplemental information provided were not true, material facts were withheld or have changed, the alternative means of compliance provided in the waiver ~~or variance~~ have failed to achieve the objectives of the statute, the requester has failed to comply with conditions set forth in the waiver ~~or variance~~ approval, or the rule or enabling Act has been amended.

875—1.108(17A,91) Violations. Violation of conditions in the waiver ~~or variance~~ approval is the equivalent of violation of the particular rule for which the waiver ~~or variance~~ is granted and is subject to the same remedies or penalties.

875—1.109(17A,91) Appeals. Appeal from a decision granting or denying a waiver ~~or variance~~ shall be in accordance with the procedures provided in Iowa Code chapter 17A. An appeal shall be taken within 30 days of the ruling. However, any appeal from a decision on a petition for waiver ~~or variance~~ in a contested case proceeding shall be in accordance with the procedures for appeal of the contested case decision.

ITEM 12. Adopt the following new **875—Chapter 1**, Division VIII, title:

DIVISION VIII
PETITIONS FOR RULE MAKING

ITEM 13. Adopt the following new rules 875—1.110(17A) to 875—1.112(17A):

875—1.110(17A) Petitions for rule making. Any person or agency may file a petition for rule making with the commissioner requesting the adoption, amendment or repeal of a rule. The petition shall be filed at the location specified in subrule 1.3(2). The petition must be in writing and provide the following information where applicable and known to the petitioner:

1.110(1) A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation to and the relevant language of the particular portion or portions of the rule proposed to be amended or repealed.

1.110(2) A citation to any law deemed relevant.

1.110(3) A brief summary of petitioner’s arguments in support of the action urged in the petition.

1.110(4) A brief summary of any data supporting the action urged in the petition.

1.110(5) The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in the proposed action which is the subject of the petition.

1.110(6) The petition must be dated and signed by the petitioner or the petitioner's representative. The petition must also include the name, mailing address, and telephone number of the petitioner and the petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed. If desired, the petition should also provide an email address and a statement that email is an acceptable method for communication.

1.110(7) The commissioner may deny a petition because it does not provide the required information.

875—1.111(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The commissioner may request a brief from the petitioner or from any other person concerning the substance of the petition.

875—1.112(17A) Review procedures.

1.112(1) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the commissioner shall deny the petition in writing and notify the petitioner of its action and the specific grounds for the denial, or grant the petition and notify the petitioner that the commissioner will institute rule-making proceedings on the subject of the petition. Notice shall be sent to the petitioner by regular mail or email if appropriate. The petitioner shall be deemed notified of the denial or granting of the petition on the date the notification is mailed to the petitioner. Copies of the petition and the document granting or denying the petition shall be sent to the administrative rules review committee.

1.112(2) Denial of a petition because it does not contain the required information does not preclude the filing of a new petition on the same subject that seeks to correct the deficiencies.

ITEM 14. Amend subrule 3.11(1) as follows:

3.11(1) The civil penalties proposed by the labor commissioner on or after ~~October 3, 2020~~ June 10, 2021, are as follows:

a. Willful violation. The penalty for each willful violation under Iowa Code section 88.14(1) shall not be less than \$9,639 and shall not exceed ~~\$134,937~~ \$136,532.

b. Repeated violation. The penalty for each repeated violation under Iowa Code section 88.14(1) shall not exceed ~~\$134,937~~ \$136,532.

c. Serious violation. The penalty for each serious violation under Iowa Code section 88.14(2) shall not exceed ~~\$13,494~~ \$13,653.

d. Other-than-serious violation. The penalty for each other-than-serious violation under Iowa Code section 88.14(3) shall not exceed ~~\$13,494~~ \$13,653.

e. Failure to correct violation. The penalty for failure to correct a violation under Iowa Code section 88.14(4) shall not exceed ~~\$13,494~~ \$13,653 per day.

f. Posting, reporting, or record-keeping violation. The penalty for each posting, reporting, or record-keeping violation under Iowa Code section 88.14(9) shall not exceed ~~\$13,494~~ \$13,653.

ITEM 15. Amend **875—Chapter 5**, title, as follows:

RULES OF PRACTICE FOR VARIANCES, LIMITATIONS, VARIATIONS,
TOLERANCES AND EXEMPTIONS

ITEM 16. Amend rule 875—5.1(88) as follows:

875—5.1(17A,88) Purpose and scope. This chapter contains rules of practice for administrative proceedings to grant variances and other relief under Iowa Code sections 17A.9A, 88.5(3), 88.5(6), and 88.5(7). These rules shall be construed to secure a prompt and just conclusion of proceedings ~~subject thereto~~.

ITEM 17. Amend rule **875—5.2(88)**, parenthetical implementation statute, as follows:

875—5.2(17A,88) Definitions.

ITEM 18. Amend rule **875—5.2(88)**, definition of "Variance," as follows:

"Variance" means ~~waivers or variances, limitations, variations, tolerances and exemptions for temporary variances (Iowa Code section 88.5(3)), permanent variances (section 88.5(6)), and special~~

~~variances (section 88.5(7))~~, pursuant to Iowa Code sections 17A.9A, 88.5(3), 88.5(6), and 88.5(7) unless otherwise specified.

ITEM 19. Rescind rule 875—5.5(88) and adopt the following **new** rule in lieu thereof:

875—5.5(17A,88) Summary reports. Information about all orders granting or denying a variance petition shall be submitted to the legislative services agency through the designated Internet site within 60 days of the granting or denying of the petition. The information submitted is available to the public via the website.

ITEM 20. Rescind and reserve rule **875—5.6(88)**.

ITEM 21. Amend paragraphs **5.7(2)“c”** and **“d”** as follows:

- c. Any request for a hearing, as provided in this chapter; ~~and~~
- d. The statements and certifications required by Iowa Code section 88.5(3); and

ITEM 22. Adopt the following **new** paragraph **5.7(2)“e”**:

- e. The signature of the applicant or the applicant’s authorized representative.

ITEM 23. Amend paragraphs **5.8(2)“f”** and **“g”** as follows:

- f. Any request for a hearing, as provided in this chapter; ~~and~~
- g. A description of how employees have been informed of the application and of their right to petition the labor commissioner for a hearing; and

ITEM 24. Adopt the following **new** paragraph **5.8(2)“h”**:

- h. The signature of the applicant or the applicant’s authorized representative.

ITEM 25. Amend paragraphs **5.9(2)“i”** and **“j”** as follows:

- i. Any request for a hearing, as provided in this chapter; ~~and~~
- j. A description of how employees have been informed of the application and of their right to petition the labor commissioner for a hearing; and

ITEM 26. Adopt the following **new** paragraph **5.9(2)“k”**:

- k. The signature of the applicant or the applicant’s authorized representative.

ITEM 27. Amend rule 875—5.11(88) as follows:

875—5.11(88) Action on applications.

~~**5.11(1) Defective applications.** If an application filed pursuant to 5.7(1), 5.8(1), 5.9(1), or 5.10(1) does not conform to the applicable rule, the labor commissioner may deny the application. Prompt notice of the denial of an application shall be given to the applicant and shall include, or be accompanied by, a brief statement of the grounds for the denial. A denial of an application pursuant to this rule shall be without prejudice to the filing of another application.~~

~~**5.11(2) Adequate applications.** If an application has not been denied pursuant to 5.11(1), the labor commissioner shall cause notice of the filing of the application to be made in accordance with rule 5.5(88).~~

~~A notice of the filing of an application shall include:~~

- ~~a. The terms or an accurate summary, of the application;~~
- ~~b. A reference to the section of the Act under which the application has been filed;~~
- ~~c. An invitation to interested persons to submit within a stated period of time written data, views or arguments regarding the application; and~~
- ~~d. Information to affected employers and employees of any right to request a hearing on the application.~~

ITEM 28. Amend rule 875—5.19(88) as follows:

875—5.19(88) Discovery.

~~**5.19(1) Perpetuating testimony.** Iowa Rules of Civil Procedure 159–166 are applicable for the taking of depositions for a variance hearing before the hearing examiner.~~

5.19(2) *Other discovery.* Whenever appropriate to a just disposition of any issue in a hearing, the hearing examiner may allow discovery by ~~other~~ appropriate procedures, such as by written interrogatories upon a party, depositions, production of documents by a party, or by entry for inspection of the employment or place of employment involved. Iowa Rules of Civil Procedure ~~121-134 and 140-158~~ shall be applicable to such authorized discovery procedures.

ITEM 29. Amend **875—Chapter 5**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections ~~84A.1, 84A.2, 88.2, 88.3, 17A.9A and 88.5, 88.6, and 88.7.~~